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13
14 UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 BRIAN G. HOLTKAMP,

18 Plaintiff,

19 v.

20 MOZILLA FOUNDATION,

21 Defendant.

22 Case No. 8:24-cv-01285-JWH-
23 ADSx

24 [PROPOSED] ORDER
25 GRANTING MOZILLA
26 FOUNDATION'S *EX PARTE*
APPLICATION FOR ORDER
CONTINUING RULE 16(B)
SCHEDULING CONFERENCE

27 Date: September 27, 2024

28 Time: 09:00 AM

Location: Courtroom 9D of
the Ronald Reagan Federal
Building and U.S.
Courthouse,
411 W. 4th Street, Santa Ana,
California

Having considered Defendant Mozilla Foundation's *Ex Parte* Application For Order Continuing Rule 16(b) Scheduling Conference, the Court hereby rules as follows:

Ex Parte relief is appropriate and necessary, because a regularly noticed motion could not be heard until after the current deadlines in the Court's Scheduling Order (Rule 26(f) conference to be conducted August 2, 2024; Joint Rule 26(f) Report to be filed August 9, 2024; Rule 12(b) Scheduling Conference to be held August 23, 2024).

The Court finds that counsel for Mozilla Foundation has provided oral notice to Plaintiff via voicemail, and written notice via email, of the date and substance of its *Ex Parte* Application. The interest of justice requires that Mozilla Foundation's Ex Parte Application be held without further notice, pursuant to Local Rule 7-19.2, because Plaintiff will not be prejudiced by postponing the Rule 26(f) conference and report and the Rule 16(b) Scheduling Conference until Mozilla Foundation's Motion to Dismiss is decided. Conversely, Mozilla Foundation will be unduly prejudiced, as it is likely to prevail on its Motion to Dismiss based on its argument that the Complaint is frivolous. It is therefore unnecessary to subject Mozilla Foundation to the burdens of participating in the Rule 26(f) conference and report, and the Rule 16(b) scheduling conference, until after its Motion to Dismiss is decided. It is the Court's policy to provide persons "subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation." Local Rule 83-8.1.

Accordingly, considering the prior two dismissals of Plaintiff's similar complaints due to frivolousness, and the likelihood that Mozilla Foundation will prevail on its Motion to Dismiss, the Court finds, pursuant to Fed. R. Civ. P. 16(b)(2), that there is good cause to delay entry of a Scheduling Order, and to postpone until after the Motion to Dismiss is decided a Rule 16(b) Scheduling Conference, and the parties' Rule 26(f) conference and report.

For the foregoing reasons, Defendant Mozilla Foundation's *Ex Parte* Application For Order Continuing Rule 16(b) Scheduling Conference is GRANTED. The Court hereby POSTPONES the Parties' Fed. R. Civ. P. 26(f) Conference; the deadline to file the Parties' Joint Fed. R. Civ. P. 26(f) Report; and the Rule 16(b) Scheduling Conference, pending further order of the Court.

IT IS SO ORDERED.

Dated:

**John W. Holcomb
UNITED STATES DISTRICT JUDGE**